

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5514 of 2004

Between:

B.K. Thimmanna Gowd, S/o. B.K. Harichandra Gowd,
R/o. H.No.1/88-41, Weavers Colony, Yemmiganur, Kurnool District.

..... PETITIONER

AND

1 State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad,

rep. by its Presiding Officer.

2 Transport Commissioner, Andhra Pradesh, Hyderabad.

3 Regional Transport Authority, Kurnool, Kurnool District,

rep. by its Secretary.

4 Deputy Transport Commissioner & Secretary,

Regional Transport Authority, Kurnool District, Kurnool.

5 APSRTC, rep. by its Managing Director, Musheerabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of Writ of Mandamus declaring the impugned Memo. of the 4th respondent in Rc.No.911/A2/B1/2002, dated 5-3-2004 as arbitrary, illegal and contrary to the order dated 9-7-2003 made in A.P.No.491/1997 of the State Transport Appellate Tribunal, Hyderabad, 1st respondent herein and consequently set aside the same, while directing the 4th respondent to permit the petitioner to operate his bus on the original

route Yemmiganur Siva Talkies to Masumandoddi, as usual.

Counsel for the Petitioner:MR.E.MARUTHI RAJA

Counsel for the Respondent Nos.1 to 4: GP FOR TRANSPORT

Counsel for the Respondent No.5: MR. K. SRINIVARA SAO, SC FOR APSRTC

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5514 OF 2004

ORDER:

The petitioner is holder of stage carriage permit on the town service route Yemmiganur Siva Talkies to Masumandoddi. The same was assailed ultimately by A.P.State Road Transport Corporation (APSRTC) in a Writ Petition. While the Writ Petition was pending, petitioner approached second respondent for grant of variation of permit by way of extension. On second respondent granting such permission, third respondent granted variation by way of extension of the route from Masumandoddi to B.Agraharam. This was again assailed by way of revision by APSRTC being R.P.No.279 of 2003. The same was allowed by first respondent herein. Challenging the same, petitioner filed Writ Petition No.2158 of 2004. In the said Writ Petition, the petitioner also prayed for interim direction to third respondent to permit the petitioner to operate the stage carriage bus on the route Yemmiganur Siva Talkies to Masumandoddi as granted by third respondent before the same was set aside by first respondent. This Court while admitting the Writ Petition declined to pass interim orders, but ordered notice in W.P.M.P. on 6.2.2004.

Fourth respondent by consequential proceedings in Memo Rc.No.911/A2/B1/2002, dt.5.3.2004 directed the petitioner to stop plying stage carriage bus on the route Yemmiganur Siva Talkies to B.Agraharam. The petitioner again filed present Writ Petition apprehending that when the variation granted by third respondent from Masumandoddi to B.Agraharam was only set aside by first respondent, the impugned Memo amounts to stopping plying of the bus in the entire town service route from Yemmiganur Siva Talkies to Masumandoddi for which petitioner obtained pucca stage carriage permit in February 1998. Though the matter was admitted, this Court did not pass any interim orders.

The W.P.M.P. being W.P.M.P.No.7193 of 2004 came up before this Court on 29.6.2005. After hearing the learned Standing Counsel for APSRTC this Court made the following observations.

This Writ Petition was filed way back on 19.3.2004 challenging the memo issued by the fourth respondent directing the petitioner to stop plying the vehicle No.CTQ 9090 on the route Yemiganur Siva talkies to B.Agraharam. The said order came to be passed pursuant to the order of State Transport Appellate Tribunal, dated 10.10.2003 in R.P.No.279 of 2003. It is brought to

the notice of this Court that a Writ Petition was already filed in W.P.No.2158 of 2004.

In that view of the matter, this Writ Petition challenging the Memo issued by the fourth respondent pursuant to the orders of the State Transport Appellate Tribunal is superfluous.

Learned counsel for the petitioner, Sri E.Maruthi Raja, contends that the Memo passed by fourth respondent on 5.3.2004 would give rise to separate cause of action to the petitioner and therefore Writ Petition No.5514 of 2004 is maintainable. Secondly he would urge that by reason of the order passed by STAT in R.P.No.279 of 2003 what was set aside was variation granted by third respondent from Masumandoddi to B.Agraharam and therefore fourth respondent could not have issued fiat directing the petitioner to stop vehicle on the entire town service route from Yemmiganur Siva Talkies to B.Agraharam.

Learned counsel for APSRTC, Sri K.Srinivasa Rao opposing the Writ Petition submits that the Memo was issued as a consequence of order passed by STAT in R.P.No.279 of 2003, dt.10.10.2003 and therefore the challenge to the same is misconceived.

The petitioner has already challenged the orders of STAT in R.P.No.279 of 2003 and when fourth respondent issued impugned Memo as a consequence of the said order by reason of the principle adumbrated in Order II Rule 2 of Code of Civil Procedure, second Writ Petition is certainly not maintainable. It is always open to the petitioner to file miscellaneous application in W.P.No.2158 of 2004 to seek necessary clarification in view of the orders passed by STAT in R.P.No.279 of 2003 which itself is in challenge in the said Writ Petition. The Writ Petition is therefore superfluous and is not maintainable. It shall, however, be open to the petitioner to move appropriate application in Writ Petition No.2158 of 2004.

The Writ Petition, with the above observations, is dismissed.

5.7.2005 (V.V.S.RAO, J)

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To

- 1 The Presiding Officer, State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad,
- 2 The Transport Commissioner, Andhra Pradesh, Hyderabad.
- 3 The Secretary, Regional Transport Authority, Kurnool, Kurnool District,
- 4 The Deputy Transport Commissioner & Secretary,

Regional Transport Authority, Kurnool District, Kurnool.

5 The Managing Director, APSRTC, Musheerabad, Hyderabad.

6 2 CCs to G.P. for Transport, High Court Bldgs., Hyderabad (OUT)

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